

AMENDED IN ASSEMBLY MAY 7, 2003

AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1331

Introduced by Assembly Members Wesson and Jerome Horton

February 21, 2003

An act to add Chapter 4.8 (commencing with Section 832.91) to Title 3 of Part 2 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1331, as amended, Wesson. Peace officers: whistleblower protection.

Existing law provides for immunity from civil and criminal liability for peace officers for their discretionary acts in arrest situations, as specified, and as limited in case law. However, existing law provides for civil causes of action against a person or persons for damages and other relief for interference with rights secured by the constitutions and laws of California and the United States. Existing law also allows the Attorney General to sue for equitable and declaratory relief against a person engaging in a pattern or practice of law enforcement conduct that deprives any person of state or federal constitutional or legal rights.

This bill would require law enforcement agencies employing specified peace officers to adopt a whistleblower policy, as specified, for the protection of those peace officers, no later than January 1, 2005, *pursuant to standards determined by the Attorney General no later than July 1, 2004.*

By imposing new duties on local law enforcement agencies, this bill would impose a state-mandated local program.

The bill would also create an offense for the intentional retaliation against a peace officer for having reported unlawful conduct or improper activity of another peace officer, punishable by imprisonment in a county jail not exceeding one year and a fine not exceeding \$10,000.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 4.8 (commencing with Section 832.91)
2 is added to Title 3 of Part 2 of the Penal Code, to read:

3
4 CHAPTER 4.8. WHISTLEBLOWER PROTECTION FOR PEACE
5 OFFICERS
6

7 832.91. (a) In order to promote a culture of accountability,
8 and detect and deter misconduct, every law enforcement agency
9 employing peace officers, as defined in Section 830.1, shall,
10 commencing January 1, 2005, institute “whistleblower” policies
11 and procedures, ~~in a manner to be prescribed~~ *consistent with the*
12 *minimum standards established* by the Attorney General.

13 (b) The policy shall protect peace officers who report, based on
14 personal knowledge, any unlawful conduct and improper activity

1 by peace officers and shall prohibit retaliation against any peace
2 officer who reports that conduct or activity or serves as a witness
3 about that conduct or activity in any proceeding.

4 (c) The Attorney General shall, *not later than July 1, 2004*,
5 determine the minimum standards to be included in the
6 whistleblower protection policies and procedures.

7 (d) Any person who intentionally engages in acts of retaliation
8 against a peace officer for having reported unlawful conduct or
9 improper activity by a peace officer is punishable by imprisonment
10 ~~at the~~ in a county jail for a period not to exceed one year and a fine
11 not to exceed ten thousand dollars (\$10,000).

12 (e) *For purposes of this section, "retaliation" means discharge*
13 *from employment, demotion, suspension or threats to do the same,*
14 *or any other acts of reprisal, coercion, or threats to do the same.*

15 (f) In addition to all other penalties provided by law, any person
16 who intentionally engages in acts of retaliation against a peace
17 officer for having reported unlawful conduct or improper activity
18 by a peace officer shall be liable in an action for damages brought
19 against him or her by the injured party.

20 ~~(f)~~

21 (g) Nothing in this article shall be deemed to diminish the
22 rights, privileges, or remedies of any employee under any other
23 federal or state law or under any employment contract or collective
24 bargaining agreement.

25 SEC. 2. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution for
27 certain costs that may be incurred by a local agency or school
28 district because in that regard this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.

34 However, notwithstanding Section 17610 of the Government
35 Code, if the Commission on State Mandates determines that this
36 act contains other costs mandated by the state, reimbursement to
37 local agencies and school districts for those costs shall be made
38 pursuant to Part 7 (commencing with Section 17500) of Division
39 4 of Title 2 of the Government Code. If the statewide cost of the
40 claim for reimbursement does not exceed one million dollars

1 (\$1,000,000), reimbursement shall be made from the State
2 Mandates Claims Fund.

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